

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, aka Bella-
Christina Birrell,

Plaintiff,

v.

MICHELE DiTOMAS,

Defendant.

No. 2:22-cv-01834-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On June 25, 2024, the magistrate judge filed findings and recommendations, which were served on the parties, and which contained notice that the parties may file objections within the time specified therein. The findings and recommendations were re-served on plaintiff on July 25, 2024. No objections to the findings and recommendations have been filed.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate]

1 court[.]”). Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record. The court adds that plaintiff’s lack of prosecution has delayed resolution
3 of this case, and the court cannot wait indefinitely for plaintiff to respond. Further, there is a risk
4 of prejudice to defendant in requiring her to continue defending this action when plaintiff appears
5 to have abandoned the case. *See Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)
6 (“The law presumes injury from unreasonable delay”). Finally, the court finds less drastic
7 measures are not available—plaintiff was warned that failure to file an amended complaint could
8 result in dismissal of this action and plaintiff received ample time to object to the findings and
9 recommendations. Given this, the court finds dismissal is proper.

10 Accordingly, IT IS HEREBY ORDERED:

- 11 1. The findings and recommendations filed June 25, 2024, *see* ECF No. 33, are
12 adopted in full.
- 13 2. This action is dismissed without prejudice for lack of prosecution and failure to
14 comply with court rules and orders.
- 15 3. The Clerk of the Court is directed to enter judgment and close this file.

16 DATED: October 4, 2024.

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19 UNITED STATES DISTRICT JUDGE
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